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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,993	08/27/2003	David J. Schneider	P755-2/HSCH 2 00007	4365
²⁷⁸⁸⁵ FAY SHARPE	7590 04/09/200 LLP	EXAMINER		
	OH 44114	ANDERSON, JAMES D		
CLEVELAND, OH 44114			ART UNIT	PAPER NUMBER
			1614	
			MAIL DATE	DELIVERY MODE
			04/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary		Application	Application No.		Applicant(s)	
		10/648,993		SCHNEIDER, DAVID J.		
		Examiner		Art Unit		
		JAMES D. A	NDERSON	1614		
The MAILING Period for Reply	DATE of this communication a	appears on the c	over sheet with the c	orrespondence ad	ldress	
A SHORTENED STANDING TO STANDI	ATUTORY PERIOD FOR REF NGER, FROM THE MAILING available under the provisions of 37 CFR in the mailing date of this communication. ecified above, the maximum statutory peri- set or extended period for reply will, by sta Office later than three months after the ma- ment. See 37 CFR 1.704(b).	DATE OF THIS 1.1.136(a). In no event iod will apply and will e tute, cause the applica	S COMMUNICATION, however, may a reply be timexpire SIX (6) MONTHS from the become ABANDONEI	N. nely filed the mailing date of this of (35 U.S.C. § 133).		
Status						
1)⊠ Responsive to 2a)⊠ This action is I 3)□ Since this app	communication(s) filed on <u>04</u> FINAL. 2b) T Ilication is in condition for allowed and the practice under	his action is nor wance except fo	n-final. or formal matters, pro		e merits is	
Disposition of Claims						
4a) Of the above 5) ☐ Claim(s) 6) ☒ Claim(s) <u>43-5</u> 7) ☐ Claim(s)	is/are pending in the applica ye claim(s) is/are without is/are allowed. is/are rejected. is/are objected to. are subject to restriction and	drawn from cons				
Application Papers						
10) The drawing(s) Applicant may n Replacement dr	on is objected to by the Exam filed on is/are: a) a ot request that any objection to the awing sheet(s) including the correctaration is objected to by the	accepted or b) the drawing(s) be rection is required	held in abeyance. See if the drawing(s) is obj	e 37 CFR 1.85(a). ected to. See 37 C	, ,	
Priority under 35 U.S.C	. § 119					
12) Acknowledgme a) All b) So 1. Certified 2. Copies of applicate	ent is made of a claim for foreignme * c) None of: I copies of the priority docume I copies of the priority docume of the certified copies of the prion from the International Burn I detailed Office action for a l	ents have been ents have been riority documen eau (PCT Rule	received. received in Application ts have been receive 17.2(a)).	on No ed in this National	Stage	
· =	ted (PTO-892) Patent Drawing Review (PTO-948) Statement(s) (PTO/SB/08)	_	Interview Summary Paper No(s)/Mail Da Notice of Informal P Other:	nte		

DETAILED ACTION

Claims 43-51 are presented for examination

Applicants' amendment filed 2/4/2008 has been received and entered into the application. Accordingly, claims 34-42 have been cancelled.

Applicants' arguments have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Response to Arguments

Applicant's arguments filed 2/4/2008 have been fully considered but they are not persuasive. Applicant presents the following arguments traversing the statutory double patenting rejections of claims 43-51 over USP Nos. 6,749,804 and 6,616,892.

Applicant argues that identical subject matter is not present in the claims under examination and claims 1-16 and 26-39 of USP No. 6,749,804 and claims 1-12 and 20-30 of USP No. 6,616,892. Applicant asserts that one can apply trichloromelamine such that is affects the production of ammonia and odors without applying so much that the pH of the habitat is lowered to less than 5 as recited in instant claim 43. This is not persuasive because Applicant in the 6,749,804 and 6,616,892 patents teaches that application of TCM in accordance with those inventions "has **indirect** insecticide properties" in that "by lowering the pH" the life cycle of certain insects is interrupted (e.g., col. 5, lines 8-10 of the '892 patent and col. 5, lines 24-26 of the '804 patent'). In other words, according to Applicant "...by the application of TCM to a

habitat the pH <u>is lowered to less than 5</u>" (col. 5, lines 11-12 of '892 patent and col. 5, lines 27-28 of the '804 patent). As such, it is clear that the lowering of pH to less than 5 is a direct result of applying TCM to an animal habitat that is not distinguishable from the ammonia reducing and odor reducing properties of TCM. Further, it is noted that the concentrations of TCM applied in claims 9-12 and 33-35 of the '804 patent are identical to those recited in instant claims 49-51. It is not clear to the Examiner how the same concentrations of TCM can be applied to the same animal habitat and yet have patentably different effects as asserted by Applicant.

Accordingly, in the absence of a showing that TCM can be applied to an animal habitat in an amount that reduces the production of ammonia and odors without lowering the pH of the habitat to less than 5, the rejections are maintained for the reasons of record and as reiterated below.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

<u>U.S. Patent No. 6,749,804</u>

Claims 43-51 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 and 26-39 of prior U.S. Patent No. 6,749,804. This is a double patenting rejection.

The instant claims recite a method of "controlling Darkling beetles" comprising treating an animal habitat with trichloromelamine *such that* the pH of the habitat is lowered to less than 5. The claims of the '804 patent recite methods of reducing the production of ammonia and odors in an animal habitat and "sanitizing" an animal habitat comprising applying an *effective* amount of trichloromelamine. The method <u>steps</u> of the pending claims and the claims of the '804 patent are identical. For example, both sets of claims recite treatment prior to the placement of animals in the habitat, treatment after placement of animals in the habitat, treatment prior to and after placing animals in the habitat, dusting and soaking the animal habitat, and concentrations of from about 25 ppm to about 1000 ppm. As such, the <u>results</u> of such treatment will be the same and are inseparable with respect to patentability.

As there is no evidence of record that applying trichloromelamine to an animal habitat in the amounts claimed in the '804 patent (which are the same as those instantly claimed) will not result in a lowering of pH and control of insects, the instant claims claim the same invention as that claimed in the '804 patent. In fact, at column 5, lines 24-31 of the '804 patent, it is disclosed that application of TCM **in accordance with this invention** has "indirect insecticide properties". Accordingly, the Terminal Disclaimer filed 3/16/2007 cannot be used to overcome this rejection.

<u>U.S. Patent No. 6,616,892</u>

Claims 43-51 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-12 and 20-30 of prior U.S. Patent No. 6,616,892. This is a double patenting rejection.

The instant claims recite a method of "controlling Darkling beetles" comprising treating an animal habitat with trichloromelamine *such that* the pH of the habitat is lowered to less than

5. The claims of the '892 patent recite methods of reducing the production of ammonia and odors in an animal habitat (claims 1-12) and "sanitizing" an animal habitat (claims 20-30) comprising applying an *effective* amount of trichloromelamine. The method <u>steps</u> of the pending claims and the claims of the '892 patent are identical. For example, both sets of claims recite treatment prior to the placement of animals in the habitat, treatment after placement of animals in the habitat, treatment prior to and after placing animals in the habitat, dusting and soaking the animal habitat. An effective amount as recited in the '892 patent appears to be a 100 ppm solution of TCM sprayed on an animal habitat (col. 5, lines 55-56). As such, the <u>results</u> of such treatment will be the same and are inseparable with respect to patentability.

As there is no evidence of record that applying trichloromelamine to an animal habitat in "an effective amount" as claimed in the '892 will not result in a lowering of pH and control of Darkling beetles, the instant claims claim the same invention as that claimed in the '892 patent. In fact, at column 5, lines 8-13 of the '892 patent, it is disclosed that application of TCM in accordance with this invention has "indirect insecticide properties". Accordingly, the Terminal Disclaimer filed 3/16/2007 cannot be used to overcome this rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JAMES D. ANDERSON whose telephone number is (571)272-

9038. The examiner can normally be reached on MON-FRI 9:00 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

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like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James D Anderson/

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614

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